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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,291	12/28/2001	Yusuke Nakazono	03560.002971.	3111
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FITZPATRICK CELLA HARPER & SCINTO			EXAMINER	
30 ROCKEFELLER PLAZA			RUDOLPH, VINCENT M	
NEW YORK, NY 10112			ART UNIT	PAPER NUMBER
			2625	
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			10/14/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/029,291	<b>Applicant(s)</b> NAKAZONO ET AL.
	<b>Examiner</b> Vincent Rudolph	<b>Art Unit</b> 2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 July 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 40,41,44,50,51,54,60,64 and 65 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 40,41,44,50,51,54,60,64 and 65 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26 January 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40-41, 44, 50-51, 54, 60 and 64-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirst ('553) in view of Benjamin ('208).

Regarding claim 40, Hirst ('553) discloses a software distributing system (over the internet, **See Col. 6, Line 17-20**, to the host device and printer, **See Figure 1**) for distributing control software (software in the image forming device, **See Col. 5, Line 19-22**) used by an image forming apparatus to an external apparatus, which is an information processing apparatus connected with the image forming apparatus, over a network (**See Figure 1**, as well as providing an internet link to the host device, **See Col. 6, Line 17-20**), which includes a receiving unit (embodied within host device, **See Figure 1, Element 20**) for receiving, from the external apparatus, production lot information of a consumable unit (manufacture date, **See Figure 2, Element 19a**) and operation information indicating a number of prints output at the image forming apparatus (the printer driver within the host device receives the manufacture date as well as the status, **See Figure 2, Element 19b**, such as number of pages that the current consumable has printed, **See Col. 5, Line 1-12**) such that the consumable unit is detachably located in the image forming apparatus (**See Figure 1, Element 18**) and

includes multiple hardware parts for forming an image to a recording medium (the laser printer, **See Col. 4, Line 16-18**, includes multiple consumable devices within it, **See Col. 1, Line 49-56**) and a memory (**See Figure 1, Element 19**) for storing the production lot information of the consumable unit (**See Figure 2**) such that the production lot information is an identifier (**See Figure 2, Element 19a**) that differs according to differences in the production conditions, which are based on a material and the production environment (paper types and other usage information pertinent to the printing process, **See Col. 5, Line 16-19**), of the consumable unit (stores the identification and model number of the consumable unit as well as data such as the number of printed pages, amount of toner remaining, etc., **See Figure 2; Col. 5, Line 7-13**), a selecting unit (embodied within the host device) that is configured to select the control software based on the production lot information and the operation information received in order for a controller unit (embodied within the host device) to distribute the control software selected to the external apparatus through the network (extracts information from the consumable, **See Col. 5, Line 3-6**, in order to provide software updates to it, **See Col. 5, Line 19-21**, such that the updated information is received over the internet, **See Figure 5-6, Col. 6, Line 17-20**) and the distributed control software is used for updating the image forming apparatus by the external apparatus (updates for the printer to allow device features to be added and altered and software bugs to be fixed, **See Col. 2, Line 43-47**).

Hirst ('553) does not disclose selecting the necessary control software for distribution from a plurality of control software depending upon whether the operation

information indicates an amount exceeding a first predetermined amount or a second predetermined amount which exceeds the first predetermined amount as well as updating the image forming apparatus is performed based on whether or not a print job of the image forming apparatus is in execution.

Benjamin ('208) discloses selecting the necessary control software for distribution from multiple control software (based upon the need of the ink cartridge, such as an updated printer driver, **See Col. 4, Line 1-5**, or updated parameters to be used in the ink jet printer, **See Col. 3, Line 47-49**) based on whether the operation information indicates an amount exceeding a predetermined amount (if the printer driver is the needed control software, it is selected based upon if the identifier code exceeds a predetermined amount, such as being more recent than the current identifier code, **See Col. 3, Line 66-Col. 4, Line 11**), and updating the image forming apparatus is performed based on whether or not a print job of the image forming apparatus is in execution (the update is not performed when a print job is in execution, but rather whenever a new ink cartridge is installed, **See Col. 3, Line 52-Col. 4, Line 11**).

It would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to include selecting the necessary software as well as updating the printer whenever a new ink cartridge is installed, such as the one disclosed within Benjamin ('208) and incorporate it into the software distributing system of Hirst ('553) because it allows the printer to determine the needed control software based off the predetermined information in order to make the proper adjustments within the printer and adequately maintain producing documents and by updating the printer, such as by

detecting when a new ink cartridge is installed, it allows the printer to automatically perform the steps to determine if any updates are needed rather than having a user perform all the steps for updating the printer.

Regarding claim 41, Hirst ('553) discloses that the production lot information of the consumable unit is based on a combination of the production lot information of the consumable hardware parts (the consumable as well as the controller, which modulates the laser for photoconductor exposure, **See Col. 4, Line 34-37**, and formatter are used in the process of receiving software updates for the printer, **See Figure 4-5; Col. 5, Line 20-22**).

Regarding claim 44, Hirst ('553) disclose the external apparatus is a computer connected with the image forming apparatus (**See Figure 1**).

Regarding claim 64, Hirst ('553) discloses that the consumable unit is a process cartridge (**See Col. 4, Line 47-48**) and the consumable hard part includes a photoconductor (**See Col. 1, Line 49-56**).

Regarding claims 50-51, 54 and 65, the rationale provided in the rejection of claims 40-41, 44 and 64 is incorporated herein. In addition, the system of claims 40-41, 44 and 64 corresponds to the method of claims 50-51, 54 and 65 and performs the steps disclosed herein.

Regarding claims 60, Hirst ('553) discloses a computer-executable program that is stored on a computer-readable medium for a computer to execute the information processing method (the printer driver software within the host device, **See Figure 1; Col. 5, Line 1-3**).

***Response to Arguments***

Applicant argues that the prior art does not disclose that a control software is selected depending upon whether the operation information indicates an amount exceeding a first predetermined amount or a second predetermined amount that exceeds the first predetermined amount as well as updating the image forming apparatus is performed based on whether or not a print job of the image forming apparatus is in execution. Thus, the prior art of Benjamin is used to meet the above limitations of the claims as well as in combination with Hirst and together do meet the limitations of the amended claims as disclosed within the rejection above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is: Yeah ('666).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vincent Rudolph whose telephone number is (571) 272-8243. The examiner can normally be reached on Monday through Friday 8 A.M. - 4:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Moore can be reached on (571) 272-7437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vincent Rudolph  
Examiner  
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